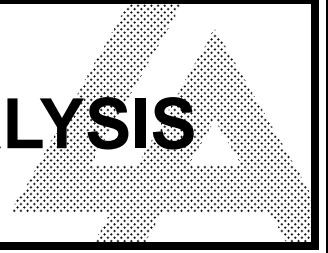


CASUAL SEX AND MORALITY: A KANTIAN-LIBERTARIAN ANALYSIS

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1. The Categorical Imperative

One of Immanuel Kant's formulations of the Categorical Imperative, the supreme principle of morality, or *Moral Law* for short, is as follows:

"Act in such a way that you always treat humanity, whether in your own person or in the person of any other, never simply as a means, but always at the same time as an end."¹

The occurrence of the word "simply" in this formulation is of vital importance. Kant is *not* saying that we infringe the Moral Law whenever we treat someone as a means to our own ends. For in treating someone as a means, our action will not conflict with the Moral Law provided that our dealings with this person also conduce to his/her own ends, i.e. provided that in treating him/her as a means to our ends we are also treating him/her as an end-in-himself/end-in-herself.

Kant's principle, then, enjoins us to treat all people as ends-in-themselves, even in those situations where we must simultaneously treat them as a means. In consequence, Kant can be construed as rejecting both altruism and egoism: for altruism urges us to make ourselves a means to the ends of others (thus failing to treat ourselves as ends); while egoism urges us to treat all others as mere means to our ends.

For Kant, an action which conflicts with the Moral Law is an immoral action; so conformity to the Moral Law is *necessary* for morality. It is not, however, *sufficient*. For example, an action performed from purely selfish motives might conform to the Moral Law but would have no moral worth. If I save your life merely because you owe me money (and I want to be paid back), then I am treating you simultaneously as a means (to get my money back) and as an end (in looking after your interests to the extent of preserving your life), so my action will conform to the Moral Law; but it is plainly an action having no moral worth, being purely self-motivated.

What, Kant says, is required for an action to have moral worth is not just *conformity* with the Moral Law, but its being done *for the sake* of the Moral Law. Thus, if I save your life because I believe it is right to treat all human beings as ends, then my action has moral worth. It might not even have occurred to me that you owed me money which I would not have received had you died.

However, suppose that it *had* occurred to me that it was in my self-interest to save your life. It is after all commonplace for us to have more than one reason for things that we do. Would my act still have had moral worth? Let me put this another way. If my only reason for saving your life was a selfish one, my act would not have had moral worth. If my only reason for saving your life was that it was right to do so, then my act *would* have had moral worth. But what if I had had two reasons for saving your life, one selfish and one moral: would my action have had moral worth then?

Kant does not explicitly answer this question, but I think it is clear what the answer should be, namely, that for the action to have moral worth, the moral reason should have been *sufficient*. In other words, I would still have performed the action for the moral reason even if all the other reasons I had for doing it had been absent. It is of course not always easy to know whether a particular one among several reasons would have been sufficient by itself for us to act in the way we did. So there may be times when we act in accordance with the Moral Law, but when we cannot be sure whether or not our action had any moral worth.

In summary, on Kant's view the Moral Law bids us to treat all people as ends-in-themselves. An action which conflicts with the Moral Law is immoral. An action which conforms to the Moral Law has moral worth if and only if it is performed for the sake of the Moral Law. An action is performed for the sake of the Moral Law if and only if, for the agent, the fact that it conformed to the Moral Law was a sufficient reason for doing it.

2. Casual Sex: Some Varieties

A man and a woman meet at a party. They are both unattached. They find each other attractive. They end up going back to the woman's place and they have safe sex. Early the next morning the man gets up, dresses and leaves. He doesn't wake the woman. He has to go home to get washed and changed and then go off to work.

I have just described an incident of casual sex. Was what happened immoral? Since two people were involved, there are four possibilities:

- (i) both acted immorally;
- (ii) neither acted immorally;
- (iii) the man acted immorally but the woman did not;
- (iv) the woman acted immorally but the man did not.

Which is the case? In the light of the Kantian view of morality outlined above, we have to say that we do not have enough information to determine the ethics of the situation. For the description given gives no indication as to whether people were treated as means or ends.²

I am going to consider a number of possibilities concerning the treatment of people as means and ends in this sexual encounter. For simplicity, I will consider only the case of the man's behaviour; but exactly the same possibilities arise concerning the woman's behaviour (only someone beguiled by 'radical feminist' mythology could fail to see this).

It seems to me that the man's behaviour must fall into one or other of six possible *types*. I will now label these types and illustrate each with a hypothetical conversation with the man. In each of these conversations, it is me asking the questions, and our protagonist giving the answers.

(1) The Egoist.

Q. Did you have a good time?

A. I made sure I had a good time.

Q. How about the woman: did she enjoy herself?

A. I don't know. I suppose so. She didn't complain. What does it matter anyway?

(2) The Rational Egoist.

Q. Did you have a good time?

A. I did.

Q. Did the woman enjoy herself?

A. Oh yes, I made sure of that. I had to: it was the only way to get the bitch to do the things I wanted.

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- (3) The Altruist.
 Q. Did you have a good time?
 A. What does that matter? The important thing is that the woman enjoyed herself. I only did it to make her happy.
- (4) The Rational Altruist.
 Q. Did you have a good time?
 A. Yes, I had to. You see, if I hadn't had a good time she would have been upset; and the whole point of my having sex with her was to make her happy.
- (5) The Kantian.
 Q. Did you have a good time?
 A. Wonderful.
 Q. Did the woman enjoy herself?
 A. Oh, I made sure of that. It wouldn't have been right for me to satisfy myself and neglect her desires. Equally, it wouldn't have been right to please her and ignore my own desires. I made sure that we both had a good time.
- (6) The Friend.
 Q. Did you have a good time?
 A. Great.
 Q. Did the woman enjoy herself?
 A. Yes she did. I liked her and I enjoyed giving her pleasure. I wanted us both to have fun together and I did all I could ensure that we did. I think I succeeded: we both enjoyed it.

The egoist is looking after only his own interests and treats his sexual partner as a mere means to the satisfaction of his own sexual desires. Although she may happen to achieve sexual satisfaction from the encounter, this is merely accidental so far as he is concerned. We could say that he treats her as a 'sex object', to give a respectable sense to an expression which is otherwise so confusingly used.

It could, of course, be the case that the woman is an egoist too, seeking only her own pleasure and not giving a damn whether the man enjoys the sex. That is, she would be treating him as a 'sex object' too. This situation, in which they are treating each other as mere means, could be described by the popular phrase "they are just using each other for sex"; but I think this is the only type of situation to which this popular phrase applies.³

In the light of the Kantian ethic outlined above, it is clear that, if our man has behaved like an egoist in his casual sexual encounter, then he has acted immorally, since he was treating the woman as a mere means. If, in addition, she was behaving like an egoist too, then they both acted immorally. And this holds even if, perchance, they both thoroughly enjoyed the experience (because they were only self-seeking and had no concern for each other).

The rational egoist differs from the egoist in that he is concerned to treat the woman as an end: he wants to give her sexual pleasure. However, he wants to do this only because, according to his calculation, it is the only way of bringing about his own sexual pleasure. For if he doesn't give her what she wants, she will not give him what he wants. To get her to participate in the achievement of his own ends he has to ensure there is something in it for her; and this means that he has, at least to some extent, to fulfil her ends also. Therefore, he does not treat his sexual partner as a mere means, but also as an end. However, he treats her as an end merely because it is in his own best interests to do so.

The rational egoist is still *au fond* an egoist. There are bound to arise some situations in which he can achieve his own ends without taking account of those of his sexual partner, or even while frustrating the achievement of her ends; in which case that is what he will do, since after all he is both rational and an egoist. The only reason why, *in general*, he pays attention to other people's interests, is that he has to if he is to promote his own self-interest. But what holds in general need not hold always.⁴

The rational egoist does not generally, then, treat his casual sexual partners as 'sex objects': he recognises that they are people with their own wants, desires and interests, and he tries to satisfy these so far as he has to in order to get what he wants. Similarly, two rational egoists having sex together would not normally be "just using each

other for sex", since each would normally be concerned to see that there is something in it for the other person.

In Kantian terms, the rational egoist in the incident of casual sex described, is not acting immorally: his action *conforms* to the Moral Law (he treats his partner as an end and not merely as a means). However, he does not act in this way *for the sake* of the Moral Law, but purely out of self-interest: his reason for treating the woman as an end is not that it is *right* to do so. Consequently, his action has no moral worth.

The altruist is acting immorally in treating himself as a mere means. On the other hand, the actions of the rational altruist, although not immoral, have no moral worth, because while he treats both himself and his partner as an end, he does so only out of consideration of her interests, and not because it is right to treat both as ends.

All of the first four possibilities are mutually exclusive; and in each, either the agent acts immorally, or his action has no moral worth, given the Kantian view of morality with which we are working. On this view, it is of course vacuously true that the Kantian acts morally. The Kantian is concerned with both his own and his partner's sexual pleasure because, given that they are going to have casual sex together, he believes it is right that he should try to ensure his partner's fun as well as his own.

The friend is also concerned with both his own and his partner's pleasure. He likes the woman and has a concern for her arising out of this. I call this 'friendship' (even though in colloquial language they are no more than acquaintances) because there exists here that interest in someone which generates a concern for their happiness.

The Kantian and the friend differ from the first four possibilities in that they are not mutually exclusive. The friend might also be a Kantian. This would be so if:

- (a) he had two reasons for treating his sexual partner as an end,
 - (i) friendship (he likes her),
 - (ii) duty (it is right to treat her as an end); *and*,
- (b) the second reason would have been sufficient by itself in the absence of the first.

If this were so, then he would have acted as he did out of friendship *and* out of duty: but he would have acted out of duty even if the friendship had not been there (assuming that he would still have wanted sex with her). Consequently, his action not only conformed to the Moral Law but also had moral worth.

On the other hand, the friend need not be a Kantian. He might not accept any duty to treat all people as ends; or, alternatively, he might accept that it *is* a duty, but act in accordance with it only when he *also* has some other reason to do so, e.g. self-interest or friendship. If so, then although he treats both himself and his partner as ends in the casual sexual encounter, and although his treatment of the woman springs not from mere self-interest but from his genuine concern for her, nevertheless his action has no moral worth. This is because it is not the case that his reason for treating her as an end is that it is right to do so. If this seems counterintuitive, just consider that in other casual sexual encounters where he does not feel the bond of friendship (or does not feel it at all strongly) he may act purely out of self-interest even to the extent of treating his partner as a mere means. For he is not restrained by respect for the Moral Law. He looks after himself, and he looks after his friends; but God help anyone else he has dealings with.

Consequently, in incidents of casual sex like the one described at the beginning of this section, each party to the fun acts morally (his/her action has moral worth) if and only if he/she behaves like the Kantian; though he/she might also (i.e. *additionally*) behave like the friend. It is of course possible that one party's actions have moral worth while the other's do not; it is also of course possible that one acts out of friendship while the other does not. However, from our Kantian moral view it is not necessary to the moral worth of the action that one treat the other as an end out of friendship (or genuine concern for that person's happiness). *A fortiori*, it is not necessary to the moral worth of one's action that one act out of *love*. What is necessary is that one should act out of respect for the Moral Law which bids us to treat each person as an end-in-himself/ herself.

Finally, a couple of points must be noted about the foregoing discussion of the ethics of casual sex. First, I have tried in my descrip-

tion of the encounter to make the incident of casual sex very simple and straightforward. Thus I have tried to eliminate things which can and sometimes do complicate incidents of casual sex, like infidelity, deceit, transmission of diseases, false promises, coercion, unwanted pregnancy, etc. This is because each of these raises separate moral issues which are not intrinsic to the question of casual sex as such.

Second, I have been discussing only the *morality* of casual sex and not its *quality*. Two people who don't particularly like each other may have sex together and enjoy it. Provided that they look after each other's sexual pleasure, and provided that they do this because they believe it is right to respect each other's interests, then their actions have moral worth. It may nevertheless be true of both of them that they would *prefer* to be having sex with someone else, with someone they liked or loved; because, other things being equal, this would add another dimension to the encounter and improve the quality of the experience. Even if this is so it would *not*, however, improve the situation from an *ethical* point of view. Indeed, some instances of great sex between people who love one another may be *morally worthless*. This would be so if they were acting merely out of their love for one another and had no respect for moral principles at all. If Hitler and Eva Braun ever had sex then, no matter how wonderful they felt the experience to be, it would have had no *ethical* value at all; because whatever their feelings for each other, it is certain that they would not be acting from a respect for all human beings as ends-in-themselves.

3. Beyond Sex

What I have been saying about casual sex can be generalised to other forms of human interaction (one example is given in note 4). In particular, it can be applied to a form of interaction of especial interest to libertarians, viz. market exchanges. In market transactions the Moral Law enjoins that we treat the parties to the transaction as ends and not merely as means. This requires that the transaction be a voluntary exchange free from fraud. In this type of exchange each party treats the other as a means but also simultaneously as an end. In free exchange with you I use you as a means to my ends in ensuring that I get what I want from the deal. But because I am not forcing you to exchange, and provided I am not deceiving you about the nature of the exchange, then I am also ensuring that the exchange conduces to your ends (for otherwise you would not take part).

The fraudster, or swindler, violates this Law; and the egoist would be a swindler whenever the opportunity presented itself. The rational egoist would *generally* refrain from fraud since he would calculate that if he acquired a reputation for being a swindler then business would suffer. He might, though, pull off a swindle whenever he felt sure it would not affect him adversely, e.g. selling shoddy goods to a tourist. The altruist would not remain in business; while the rational altruist would probably just cover his costs. The Kantian, on the other hand, would try to ensure that every exchange to which he/she was a party was free from fraud and coercion, because he/she believes it is *right* to try to ensure this. He/she might *also*, in some cases, want to ensure such a fair exchange out of friendship for the other party to the trade. However, the non-Kantian who trades fairly with his/her friends, out of friendship, might be a swindler in his/her transactions with other people.

The significance of this for libertarianism is as follows. Socialists often denounce the free market and its advocates as representative of greed, selfishness, callous calculation or exploitation. A possible response to this is to try to make a virtue of these vices, thus extolling "the virtue of selfishness" or the benefits of rational egoism. However to do this is, from the Kantian perspective, to unnecessarily concede ground to the opposition.

The free market achieves the most efficient allocation of resources for the satisfaction of human wants; but it does this only on the assumption of voluntary exchanges free from coercion and fraud. The working of the free market would be undermined if everyone were swindling everyone else. Of course, a free market full of egoists would still work as it should, provided the egoists were generally shrewd enough to avoid being swindled. However, the free market does not *require* that all its participants be shrewd egoists. It would be sufficient if its members generally showed respect for the prin-

ciple of fair exchange. There is therefore no reason why the free marketeer cannot take the moral high ground.

4. Prostitution

I have applied one formulation of Kant's Categorical Imperative to casual sex and to market transactions. It follows that it will also apply to prostitution, which is an instance of both. In the standard case of sex with a prostitute, the client is not "just using her for sex": he is *paying* her for it and to that extent is securing her satisfaction from the encounter. He might also have a friendly concern for her and want to ensure that she receives due payment out of friendship. If he is an ethical man he will be concerned, *out of respect for the Moral Law*, to ensure that she receives due payment. Due payment, of course, will be that agreed, voluntarily, between buyer and seller, just as it is for other goods and services.

Indeed, even the type of casual sexual encounter described at the start of section 2 can be assimilated to a market transaction, viz. barter or payment in kind. It differs from prostitution only in that the participants are exchanging sexual pleasure for sexual pleasure rather than sexual pleasure for money. This does *not*, of course, mean that there is anything morally wrong with it.

I have been speaking of prostitution where the client is male and the prostitute female. This is, after all, the most usual case. However, what I have said plainly applies equally whatever the sexes of the participants. In particular it applies where the client is female and the prostitute male. There is thus nothing wrong with a woman buying sexual services from a man. Provided that they each take care of one another's interests in the transaction because it is right to so take care, then their actions will conform to the Moral Law and have moral worth. It has been well-known for decades that rich women pay for the sexual services of gigolos. A more recent phenomenon ('exposed' in some of the Sunday newspapers) is women obtaining the sexual services of male prostitutes through contact magazines. The fact that at least some women now feel able to avail themselves of this option is a mark of the sexual liberation of women.⁵ A further mark of this would be the existence of lesbian prostitutes (though these probably already exist too).

In connecting prostitution with sexual liberation I am *not* saying that the more one has sex with prostitutes the more liberated one is. Some sexually liberated people might be such that they enjoy sex only with people they like and know well and/or when their sexual partner *derives* sexual pleasure from *giving them* sexual pleasure. Such people may not see much fun in paying for sex with a prostitute. However, if they *are* sexually liberated they will recognise that there is nothing *morally* wrong with prostitution, and they will respect the tastes of people who do find that they can have fun in this way. The fact is that many people can and do enjoy casual sex with someone for whom they feel no bond of love or even friendship, where they are effectively paying for their sexual pleasure in kind if not in cash. It is a mark of sexual liberation that people can recognise this fact about themselves and feel free to act on it.

5. Limitations of the Categorical Imperative

It has been important for the discussion of the ethics of casual sex that I have been considering only one-off sexual encounters. I have not been talking of long-term, or even shorter-term, sexual relationships; or even of cases where there is no on-going relationship, but a couple happen to 'bump in to each other' from time to time and sometimes end up having sex. All these kinds of cases raise problems for the Kantian formulation of the Categorical Imperative.

Imagine a couple who live together. They have sex together regularly. However, there are some occasions on which, say, the woman does not feel like sex but engages in it for the sake of her partner. On such occasions she is treating herself as a mere means to his sexual pleasure. And if he is aware of the situation then he too is treating her as a mere means to his sexual pleasure. However, we may feel that there is nothing wrong in this provided there is reciprocation: either in the form of there being occasions when the man engages in sex (though presumably not intercourse) for his partner's sake, even though he doesn't want sex himself; or in the form of him taking care of her in some other way (of making himself a mere

means to some other end of hers). Indeed, in any long-term relationship, however good, sex will not always take the form of each person deriving sexual pleasure from giving the other person sexual pleasure: there are bound to be times when one person is not in the mood but makes him/herself a mere means to the other person's sexual pleasure out of love or friendship. So long as there is *some* form of reciprocation there need be nothing ethically wrong with this.

In other words, when sex occurs within a relationship, however 'loose' or intermittent that relationship may be, it is not morally necessary that every instance of sex should have the couple treating themselves and each other as ends; it is only morally necessary that they both be treated as ends in the relationship as a whole, i.e. that there is give and take, that the relationship (as a 'package') serves them both in the long run.

I think that what this shows is that Kant's principle, while it works reasonably enough for casual sex and other one-off human interactions, does *not* apply to more long-term relationships. For the principle enjoins us *never* to treat people as mere means; whereas I have just argued that it is sometimes morally acceptable to treat oneself or someone else as a mere means provided this is only part of the general give and take of a broader worthwhile relationship.

It may be possible to save Kant's principle here by viewing longer-term relationships as analogous to contracts whereby one tacitly agrees to perform certain duties in return for the other person performing certain duties for one. In engaging in such a relationship, in agreeing to such a contract, two people would, overall, be treating each other as ends as well as means since the contract terms make provision for the interests of both.

I think this shows the vagueness of the notions of means and ends. Kant's principle of treating people always as an end, never as a mere means, is too unclear to form the basis of a philosophical exposition of ethics. It seems to work well enough for one-off human interactions but a different, though similar, principle is required for other kinds of relationships. One would expect there to be a formulation which captures what is common to both types of situation. This formulation will not use the terminology of means and ends.⁶

6. A Libertarian Categorical Imperative

A special interpretation of Kant's Categorical Imperative yields the following libertarian principle: *Always act so that you not only assert your own liberty but also respect the equal liberty of others.*

Alternatively: *Always act so that you not only exercise your own rights but also respect the equal rights of others.*

These principles are less general than Kant's because they cannot be applied to explicate the ethics of casual sex. There is no human right to sexual pleasure (this would be a novel form of 'welfare right'); but we have a duty to secure the sexual pleasure of our partner in casual sex (provided he/she is not a prostitute).

It might be possible to maintain that any form of human interaction engenders in the participants rights over each other for the duration of that interaction and relating specifically to it. Thus if two people decide to have casual sex with each other, then they generate in each other a right to sexual pleasure which they each have a duty to respect. This would yield the following formulation of the fundamental and universal form of the Categorical Imperative: *Always act so that you not only assert your own human and specific rights, but also respect the human and specific rights of others.*

However, I don't know how plausible this view of the generation of specific rights is. I leave the question open for further discussion.⁷

The moral libertarian, then, will respect the rights of all people equally, and he/she will do this because it is right (and not merely from rational self-interest). He/she will also, in each of his/her dealings or interactions with others, treat them, as well as himself/herself, as ends; and he/she will do this because it is right (because it is his/her moral duty).

7. Summary

I want to end by summarising some of the most important points I consider I have established in this paper.

- (1) There is nothing intrinsically immoral about
 - (a) casual sex,
 - (b) market transactions,
 - (c) prostitution.

In some cases of each of these, one or more of the parties may act immorally. In other cases, all parties will act so that they not only conform to the Moral Law but perform actions which have moral worth (are ethically praiseworthy).

- (2) While it may be possible to compare good casual sex adversely with good sex in a loving relationship, this is a grading in terms of the quality of the experience and not in terms of moral worth.
- (3) A belief in the free market does *not* commit one to an advocacy of selfishness or rational egoism: it is perfectly consistent with a belief in, and respect for, more traditional moral principles.
- (4) A moral libertarian will act out of respect for his/her moral duties, which means that in his/her interactions with others he/she will treat them and him/herself as ends, and in particular, respect their rights as well as his/her own.

NOTES

1. "Groundwork of the Metaphysics of Morals", in H. J. Paton, *The Moral Law*, Hutchinson, London, 1983, p. 91.
2. Note that I say "in the light of the Kantian view of morality outlined". This is not the same as saying "in the light of Kant's (whole) ethical views". Kant himself was a prude who would have morally condemned both parties to the casual sex; but I am extracting elements of lasting value from Kant's ethics.

3. One often hears this phrase applied to any situation where people are having sex without love, or perhaps without friendship. Such uses of the phrase constitute a refusal to see sex as an end in itself. They reflect either a puritanical attitude to sex which sees sex as dirty, or a killjoy opposition to people having fun (as though fun is only acceptable when it is a by-product of something more serious).

4. The following personal example illustrates that while in general it may pay to be honest, there are circumstances in which rational self-interest dictates dishonesty.

When my father died, we had been working together for someone who had not paid us for some months. A couple of weeks after the death I met our erstwhile employer and obtained the due payment. It was a relatively substantial sum. My mother did not know that my father had money owing to him from this employer. I was the only person in the family who did know. Amongst my family I have an unimpeachable reputation for honesty.

If I had been a rational egoist, I would have pocketed my father's share of the payment: nobody would have known of this theft, and nobody would ever have suspected me of having misappropriated some of my father's estate. As it was my father's wish that his belongings should pass, on his death, to my mother, I would have been stealing from my mother, i.e. I would have been using her as a mere means to my financial advantage. In fact, I handed over the money to my mother, thereby looking after her interests and so treating her as an end.

5. The existence of male prostitutes with female clients appears to be a refutation of the 'radical feminist' view of prostitution. On this view, prostitution is an institution to assert the dominance and power of men over women, so the prostitute is necessarily female.

Of course, the existence of male prostitutes with male clients ought to count as a refutation of this view too; but the 'radical feminist' claims that these male prostitutes are 'feminised' because they are playing a female role. From which it can be seen that 'radical feminism' is just another reinforced dogmatism. However, though such stratagems might rescue 'radical feminism' from empirical refutation, I believe they can do so only at the price of logical incoherence. But that is an argument for a separate paper.

6. Kant offers other formulations of the Categorical Imperative which employ the notion of universalisability (cf. op. cit., p. 84). The idea here is that moral principles ought to apply equally to everyone; and this is reflected in our ordinary moral discourse when we criticise an action, or proposed action, by saying "If everybody did that ...". There are, however, well-known problems with Kant's universalisability principle. See, e.g. R. C. S. Walker, *Kant*, Routledge and Kegan Paul, London, 1978, pp. 151-159.

7. Antony Flew endorses the Confucian view that the basic principle which ought to govern conduct is *reciprocity*. See *The Right To Death*, Legal Notes No. 8, Libertarian Alliance, London, 1990, and *Equal Liberty Versus Equal Value*, Political Notes No. 63, Libertarian Alliance, London, 1991. However, this will not suffice to formulate the fundamental Categorical Imperative, since the principle of reciprocity would be honoured, e.g., in a society of egoists, where everyone treated everyone else as a mere means, a situation which would be morally execrable.